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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/361,425	07/27/1999	JOHN KUNG	JBP461	5503

7590 08/18/2003

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EXAMINER

KAM, CHIH MIN

ART UNIT	PAPER NUMBER
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1653

DATE MAILED: 08/18/2003

33

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/361,425

Applicant(s)

KUNG ET AL.

Examiner

Chih-Min Kam

Art Unit

1653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 7, 14 and 16-24 is/are pending in the application.
- 4a) Of the above claim(s) 14 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7 and 17-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other:

## **DETAILED ACTION**

### ***Status of the Claims***

1. Claims 7, 14 and 16-24 are pending.

Applicants' amendment filed on May 30, 2003 (Paper No. 32) is acknowledged, and applicants' response has been fully considered. Claims 7, 17, 19, 20 and 22-24 have been amended, claim 15 has been cancelled, and claims 14 and 16 stand withdrawn from consideration. Regarding the presently amended claim 20, applicant has amended claim 20 of the amendment filed September 11, 2002, which has not been entered, thus the claim 20 (A composition according to claim 7 wherein said oxygen species are a retinoid and an ascorbic acid) in the amendment filed February 4, 2002 instead of the presently amended claim 20 is examined. Please cancel claim 20 and replace with a new claim. Claims 7 and 17-24 are examined.

### **Rejection Withdrawn**

#### ***Claim Rejections - 35 USC § 112***

2. The previous rejection of claims 7 and 15 under 35 U.S.C.112, second paragraph, is withdrawn in view of applicants' amendment to the claim, applicants' cancellation of the claim, and applicants' response at page 4 in Paper No. 32.

#### ***Claim Rejections - 35 USC § 102***

3. The previous rejection of claim 15 under 35 U.S.C.102(a), as being anticipated by Jiang *et al.* (J. Nutritional Biochemistry 9, 362-369 (July 1998)), is withdrawn in view of applicants' cancellation of the claim Paper No. 32.

***Claim Objections***

4. Claim 22 is objected to because of the use of the phrase "an ascorbic acid in an amount of about 0.01% to about 20% by weight of the composition N-acetylcysteine in an amount of about 0.001% to about 5% by weight of the composition." A term ", and" inserted between "the composition" and "N-acetylcysteine" is suggested.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent; or,

5. Claims 7 and 17-24 are rejected under 35 U.S.C. 102(a) as being anticipated by Jiang *et al.* (J. Nutritional Biochemistry 9, 362-369 (July 1998)).

Jiang *et al.* teach the synergistic effect of dehydroepiandrosterone (DHEA) and antioxidant nutrients to mice, where the antioxidant nutrients contain mixture of L-ascorbic acid (0.3 mg/g corresponding to 0.03%), D- $\alpha$ -tocopherol (1.5 mg/g corresponding to 0.15%), N-acetylcysteine (0.3 mg/g corresponding to 0.03%), retinol (0.08 mg/g corresponding to 0.008%), L-carnitine (0.3 mg/g corresponding to 0.03%), and bioflavanoid (0.3 mg/g corresponding to 0.03%) (page 363, right column, first paragraph; claims 7 and 17-24). The amount of retinol in the composition is 0.008%, which is about 0.01% (claims 22-24), and L-carnitine is a known fatty acid binder (claim 21).

In response, applicants indicate claims 7, 17, 19 and 22-24 have been amended to recite a topical composition, while Jiang *et al.* teach a dietary supplement, and the reference does not

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suggest or describe the composition that may be applied topically to the skin (page 4 of the response). The response has been fully considered, however, the argument is not persuasive because topical application is an intended use, which does not change the characteristics of the composition, thus the topical composition of the instant application is not different from the nutritional composition of the prior art.

6. Claims 7 and 20 are rejected under 35 U.S.C. 102(a) as being anticipated by Fisher *et al.* (WO 98/55075).

Fisher *et al.* teach a composition for ameliorating various effects of UV radiation comprising effective amounts of retinoid and antioxidants such as ascorbic acid and N-acetylcysteine (page 5, lines 1-4; page 15, line 27-page 16, line 32; claims 1, 3, 4, 10 and 14 of WO 98/55075), which meets the criteria of claims 7 and 20.

In response, applicants indicate the reference only mentions retinoids, ascorbic acid and N-acetylcysteine as potential MMP inhibitors, it does not propose the composition of the presently amended claims, wherein an amount of N-acetylcysteine is effective to stabilize the oxygen-labile species (pages 4-5 of the response). The argument is not persuasive because claims 7 and 20 (presently amended claim 20 is not examined; see paragraph 1) do not recite the effective amount of N-acetylcysteine being used, and N-acetylcysteine in the composition would be expected to stabilize other oxygen-labile species because of the property of the compound.

#### ***Conclusion***

7. No claims are allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chih-Min Kam whose telephone number is (703) 308-9437. The examiner can normally be reached on 8.00-4:30, Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low, Ph. D. can be reached on (703) 308-2923. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-0294 for regular communications and (703) 308-4227 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Chih-Min Kam, Ph. D. *CMK*  
Patent Examiner

*Christopher S. F. Low*

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August 13, 2003

CHRISTOPHER S. F. LOW  
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